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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,716	05/17/2001	Raymond S. Wach	OID08-10	4114

58406 7590 04/03/2009

BARRY W. CHAPIN, ESQ.
CHAPIN INTELLECTUAL PROPERTY LAW, LLC
WESTBOROUGH OFFICE PARK
1700 WEST PARK DRIVE, SUITE 280
WESTBOROUGH, MA 01581

EXAMINER	
TAYLOR, NICHOLAS R	
ART UNIT	PAPER NUMBER
2441	

MAIL DATE	DELIVERY MODE
04/03/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/859,716	WACH, RAYMOND S.	
	Examiner	Art Unit	
	Nicholas Taylor	2441	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-7,11-15,19,22-25,29,32-35,37 and 38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-7,11-15,19,22-25,29,32-35,37 and 38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 May 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1, 4-7, 11-15, 19, 22-25, 29, 32-35, 37, and 38 have been presented for examination and are rejected.

Response to Arguments

2. Applicant's arguments filed December 30th, 2008, have been fully considered but they are deemed not persuasive.

3. In the remarks, applicant argued in substance that:

(A) The prior art of Landan does not teach a first system having a different owner than the owner of said target and an owner of said second system. The cited portion of Landan states that the "host computers...include computers that are owned or controlled by the operator of the transactional server...". Thus, Landan teaches away from a system having different owners.

As to point (A), the cited portion of Landan discloses that the host computers "may advantageously include computers that are owned or controlled by the operator of the transactional" (col. 5, lines 23-25). While shared ownership is noted as offering potential benefits, it is neither or a required configuration nor does it preclude teaching the limitation of a "first system having a different owner than an owner of said target and

an owner of said second system." As to the argument that a portion of the reference teaches away from Applicant's invention, it is respectfully noted that arguments that the prior art teaches away from the invention are not germane to a rejection under 35 U.S.C. § 102. See MPEP 2131.05.

(B) The prior art of Landan does not teach wherein the target being tested comprises an object-oriented software component, said object-oriented software component usable to build an application. Landan is merely used to test websites and servers, which differs from object-oriented software components usable to build an application. Such testing provides insight into specific components rather than a server or website in general.

As to point (B), Landan teaches the testing of, for example, a transactional web server (fig. 1 item 30). The web server includes one or more object-oriented software components (e.g., col. 5, lines 2-7 applications 30B of fig. 1) that "provide functionality for implementing one or more business processes, such as setting up a user account or placing an order." Thus, these components are both object-oriented (programming functionality encapsulated into a distinct, interacting object) and usable to build an application (wherein individual functionality is combined to build an application, e.g., a transaction interface).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 4-6, 11-15, 19, 22-24, 29, 32-33, 35, 37, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Landan (U.S. Patent 6,449,739).

6. As per claims 1 and 19, Landan teaches a method of performing distributed testing of a target comprising the steps of:

identifying a first and a second system which meets a predetermined criteria including a physical location of said system, said first system having a different owner than an owner of said target and an owner of said second system; (Landan, col. 5, lines 17-30 and fig. 1 remote systems; see also col. 6, lines 6-20 and 44-46; see also overview of col. 7, lines 14-45)

scheduling said first and second system to provide load to said target, (Landan, see, e.g., col. 6, lines 21-29 where scheduling is assigned; see also col. 7, lines 57-66)

wherein said load comprises provision of a plurality of virtual users which perform a variety of transactions with the target being tested, (Landan, see col. 5, lines 17-30 and transactions of col. 6, lines 47-64 describing the use of virtual users)

said target comprising an object-oriented software component, said object-oriented software component usable to build an application; and (Landan, col. 4 line 63 to col. 5, line 11; see also col. 9, lines 39-55)

deploying said first and said second system at the scheduled time, said first and said second system providing load to said target (Landan, see, e.g., col. 6, lines 21-29 where scheduling is assigned; see also col. 7, lines 57-66).

7. As per claims 4 and 22, Landan teaches the system further wherein said predetermined criteria further include additional criteria selected from the group comprising: sizes of said systems, speeds of said systems, and availability of said systems (Landan, see criteria of col. 5, lines 17-30 and fig. 1; col. 6, lines 6-20 and 44-46; see also overview of col. 7, lines 14-45).

8. As per claims 5 and 23, Landan teaches the system further wherein said first and said second system provides load across a network to said target (Landan, col. 5, lines 17-30 and fig. 1 where load is provided to the target; see also col. 6, lines 6-20 and 44-46; see also overview of col. 7, lines 14-45).

9. As per claims 6 and 24, Landan teaches the system further including the step of defining a catalog of potential systems which meet said predetermined criteria and wherein said step of identifying a first and second system is performed from said

catalog of potential systems (Landan, col. 5, lines 17-30 and fig. 1 remote systems; see also col. 6, lines 6-20 and 44-46; see also overview of col. 7, lines 14-45).

10. As per claims 11 and 29, Landan teaches a method of performing distributed monitoring of a target comprising the steps of:

identifying a first and a second system which meets a predetermined criteria including a physical location of said system, said first system having a different owner than said target and an owner of said second system; (Landan, col. 5, lines 17-30 and fig. 1 remote systems; see also col. 6, lines 6-20 and 44-46; see also overview of col. 7, lines 14-45)

scheduling said first and said second system to monitor said target, (Landan, see, e.g., col. 6, lines 21-29 where scheduling is assigned; see also col. 7, lines 57-66)

said target comprising an object-oriented software component, said object-oriented software component usable to build an application; and (Landan, col. 4 line 63 to col. 5, line 11; see also col. 9, lines 39-55)

deploying said first and said second system at the scheduled time, (Landan, see, e.g., col. 6, lines 21-29; see also col. 7, lines 57-66)

said first and said second system providing monitor functions to said target where the monitor functions comprises providing testing of deployed targets in order to detect and report performance problems (Landan, see col. 5, lines 52-67 and col. 8, lines 11-20 where monitoring and performance problem reporting are provided).

11. As per claim 12, Landan teaches the system further wherein said target comprises a web site (Landan, col. 5, lines 17-30 and fig. 1 overview including the target).

12. As per claims 13 and 32, Landan teaches the system further wherein said predetermined criteria further include additional criteria selected from the group comprising: sizes of at least one of said first and said second system, speeds of at least one of said first and said second system, and availability of at least one of said first and said second system (Landan, see criteria of col. 5, lines 17-30 and fig. 1; col. 6, lines 6-20 and 44-46; see also overview of col. 7, lines 14-45).

13. As per claim 14, Landan teaches the system further wherein said first and said second system provides monitor functions across a network to said target (Landan, see col. 5, lines 52-67 and col. 8, lines 11-20 where monitoring and performance problem reporting are provided).

14. As per claims 15 and 33, Landan teaches the system further including the step of defining a catalog of potential system which meet said predetermined criteria and wherein said step of identifying a first and a second system is performed from said catalog of potential systems (Landan, col. 5, lines 17-30 and fig. 1 remote systems; see also col. 6, lines 6-20 and 44-46; see also overview of col. 7, lines 14-45).

15. As per claim 35, Landan teaches the system further wherein said systems provide load across a network to said target (Landan, col. 5, lines 17-30 and fig. 1 where load is provided to the target; see also col. 6, lines 6-20 and 44-46; see also overview of col. 7, lines 14-45).

16. As per claims 37 and 38, Landan teaches the system further wherein said providing load emulates a real world environment (Landan, see col. 5, lines 17-30 and transactions of col. 6, lines 47-64 describing the emulation of a real world environment).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

18. Claims 7, 25, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landan (U.S. Patent 6,449,739) and Acker et al. (U.S. Patent 6,684,387).

19. As per claims 7 and 25, Landan teaches the above, yet fails to teach the system further wherein said software component is selected from the group consisting of EJB, Corba, COM, DCOM and COM+.

Acker teaches a method of performing distributed testing of object-oriented software components that are usable to build an application (Acker, fig. 1; col. 3, lines

41-57; col. 4, lines 48-60) including one selected from the group consisting of EJB, Corba, COM, DCOM, and COM+ (Acker, col. 3, lines 41-57). Acker achieves this testing by similarly providing a load and monitoring a target component (see Acker, col. 4, lines 25-47).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Landan and Acker to provide the method of Acker in the system of Landan, because doing so would enable a method of desirable distributed software component validation and verification (Acker, col. 2, lines 38-44) in a system that is designed to implement distributed network tasks on object-oriented software components (Landan, col. 4 line 63 to col. 5, line 11; see also col. 9, lines 39-55).

20. As per claim 34, Landan teaches the above, yet fails to teach the system further wherein said software component is selected from the group consisting of EJB, CORBA, COM, DCOM, and COM+.

Acker teaches a method of performing distributed testing of object-oriented software components that are usable to build an application (Acker, fig. 1; col. 3, lines 41-57; col. 4, lines 48-60) including one selected from the group consisting of EJB, Corba, COM, DCOM, and COM+ (Acker, col. 3, lines 41-57). Acker achieves this testing by similarly providing a load and monitoring a target component (see Acker, col. 4, lines 25-47).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Landan and Acker to provide the method of Acker in the system of Landan, because doing so would enable a method of desirable distributed software component validation and verification (Acker, col. 2, lines 38-44) in a system that is designed to implement distributed network tasks on object-oriented software components (Landan, col. 4 line 63 to col. 5, line 11; see also col. 9, lines 39-55).

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-

3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/NT/
Nicholas Taylor
Examiner
Art Unit 2441

/Larry D Donaghue/
Primary Examiner, Art Unit 2454